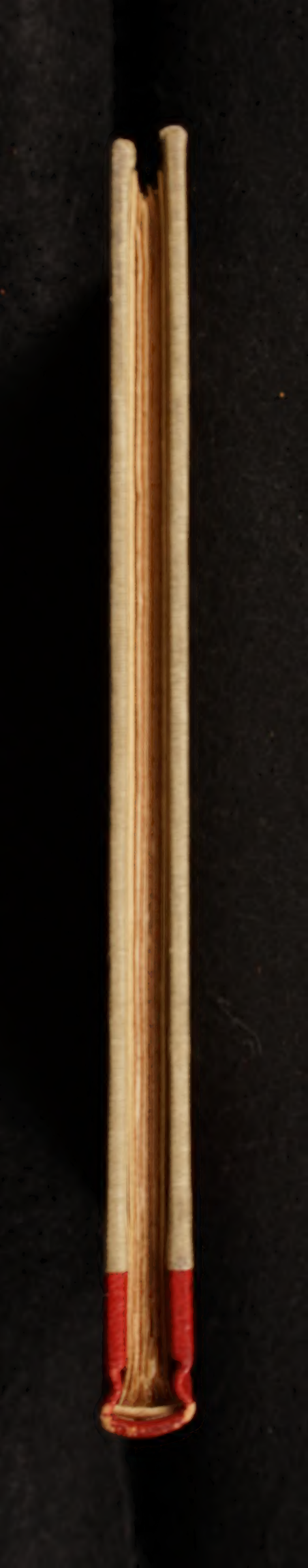
FALKLAND - DEBATE ON FOOTE'S RESOLUTION - BALTIMORE, 1830



A

REVIEW,

ON THE

ARTICLE IN THE SOUTHERN REVIEW,

FOR 1830,

ON THE SEVERAL SPEECHES MADE DURING THE

DEBATE ON MR. FOOTE'S RESOLUTION,

BY

MR. HAYNE OF SOUTH CAROLINA,

AND

MR. WEBSTER OF MASSACHUSETTS.

BY LUCIUS FALKLAND.

If you rear this house against this house,
It will the woefullest division prove,
That ever fell upon this cursed earth.
RICHARD II.

We are as opposite, Ajaccio, both in thought and speech, as Jew and Gentile: thou canst not be my friend; and knowing no medium in these high matters betwixt love and hate, as thy sworn enemy I shall pursue thee, through all the devious and uncertain paths into which thy sorest necessity has urged thee.—ANONYMOUS.

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1830.

REVIEW.

The article under review, takes into consideration, the various points discussed in the several speeches made by Mr. Hayne of South Carolina, and Mr. Webster of Massachusetts, during the debate that grew out of Mr. Foote's resolution. As we have neither time nor inclination, to enter the extensive field of discussion, thus opened to us by the reviewer, we shall confine ourselves solely to a review of the arguments advanced in support of the proposition, that a *state has a right to nullify an act of Congress.* It is almost needless to observe upon the inducements that have led us to the present investigation. They are apparent even to the most careless. The intrinsic importance of the subject, and the additional importance it acquires from the support that is supposed to have been given to it, by some distinguished statesmen of our country, in the earlier days of the Republic, and the known support, of some of the leading politicians of the present day, render it worthy the serious attention of all. Questions vital to the honour and happiness of the nation, are not to be treated either lightly or carelessly. This is a question of such a character—it is by many regarded as a question between weakness and inefficiency in the government on the one hand, and strength and security on the other; whilst there are those who regard it as a question between entire consolidation on the one part, and necessary and safe restriction on the other. A subject thus presenting, in either light you view it, a regard for the country's good, cannot fail to command universal consideration. Things that are apparently on the surface, very frequently penetrate to the core. Distemperatures that seem light, very frequently increase, so as to pervade the whole system. In politics as in religion, there is a necessity for the utmost watchfulness, to restrain, and guard against, the evil consequences of the passions and follies of mankind.

Before entering upon the proposed examination of the argu-

ments of the reviewer, we will take occasion to observe, that we can find no precedent in the acts of any of the states of the union, for the doctrine that is here contended for. Virginia, Kentucky, Massachusetts and Pennsylvania, have each in their turn, resisted laws they deemed unconstitutional; but not in the manner, the right to which, the reviewer now claims, on the part of South Carolina. The State of Massachusetts did not claim this power, in the case growing out of the embargo law. On the contrary she carried the question before the Supreme Court, and acquiesced in the decision of that Court against her; thereby plainly declaring that she regarded that Court as the ordinary referee of all cases involving questions of constitutionality between the general government and a state. Neither did Pennsylvania claim this power, she submitted the question involving her rights to the decision of the other States, by inviting them to co-operate with her in declaring the law complained of, unconstitutional. These States refused to give this co-operation, upon which she determined to resort to force. Virginia too, is said also to have declared her belief in this doctrine. We can find, however, no authority for this assertion. It is true, she did suppose her rights, in common with the rights of the other States, violated by some laws of very questionable constitutionality—the alien and sedition acts; and that she resisted the operation of those laws. But how did she resist them? certainly not by exercising the power, contended for by the reviewer, of declaring a law of Congress null and void within her limits. No such doctrine we assert is maintained by her, and this we shall shew, during the course of this review, to a demonstration. The Virginia Resolutions, the authority for this assertion, only assert the right of *interposition*, on the part of all the States: not the right of *nullification*, as it is termed, by a single State. The Kentucky Resolutions stand upon the same footing with those of Virginia, and consequently are in likewise, no precedent for this doctrine. We believe that neither of these States, who have been regarded as zealous defenders of State's Rights, ever took "part or lot" in the maintenance of this doctrine. It was reserved alone for South Carolina—the "generous and devoted" Carolina, to contend for it, to the present great extent. She has proclaimed the broad doctrine, and thus leaving us in no uncertainty as to her meaning; has entered upon its support, with a characteristic enthusiasm, that in a better cause would purchase for her

"golden opinions from all men," but which, as the case is, cannot fail to call down upon her the frowns of the nation. This spirit—a spirit that looks to the sword, would be unquestionably deserving of all commendation, were it displayed as S. Carolina once did manifest it in resisting the doctrines of passive obedience and non-resistance; but where, as in the present case, no such doctrine is asserted, and peaceful and constitutional means can be resorted to, to effect the end to be gained, it affords an occasion, to the enemies of Republican Governments, for one of the keenest satyres that could be made against the cause of civil liberty. It is a spirit in every respect unworthy of South Carolina; and her sisters of the Union might "laugh it even unto scorn," were it not more generous as well as considerate in them to use persuasion.

We cannot refrain from expressing wonder at the fervour with which South Carolina supports this doctrine. One would suppose, that it was in reality a question with her, between honour and disgrace. She has embarked in it with a Hotspur-like confidence, in no wise doubting her certainty of success. She is altogether a zealot in its defence. Indeed, one would suppose from her late very loud outcry, that she had been slumbering for years upon this doctrine, in order that she might rise up at this time in its support, like the waking Lyon, with renewed vigour, and increased strength. She has not only shown zeal in this cause, but she has also entered the field of discussion. She has thrown around her the garb of "soberness and truth," for she even attempts argument. Metaphysical political dissertations, ingenious and able, as far as great efforts in a bad cause can be able, are poured forth from her upon all sides. She never speaks, but that State's Rights is the theme. Even the festival is converted into the theatre of her outcries, in behalf of this cherished child of her adoption.—Whilst worshipping the god of wine, with one breath, with the next she proclaims in her fancied wrongs, the inevitable dissolution of the Union. With one hand she wields a sceptre, whilst with the other she draws a cork. By turns, like an all-accomplished actor, she plays the parts of the hero and the tapster.—There is nothing of the cool deliberation of greatness or dignity in her conduct. She is altogether inconsistent. All her measures are rash. Such is South Carolina, as the author and advocate of this doctrine of disunion—the doctrine of nullification.

We will now proceed to the proposed investigation, of the arguments advanced by the reviewer, in the article under consideration. During this investigation, we shall point out the difficulties that embarrass this doctrine, its irreconcileable points; in one word, its utter incapability of being defended.

In this review, we shall not contend for the ground which has been occupied by Mr. Webster. Perhaps, the ground which has been contended for by that gentleman, certainly, in Gen. Hayne's opinion, with no common ability, is as much too broad on the one hand, as the ground contended for by the reviewer, is too broad on the other. The one contends that the people are the sole authors of the Constitution—that it was made by them, and for them alone. The other as broadly lays down the opposite doctrine, that it is the constitution of the States, made by them, and for them alone.—Neither of these do we believe to contain the true doctrine, as to the source of the powers of the Constitution. This is a government of a mixt character. It is in part confederate, and in part national; and this we gather unequivocally from the Federalist, a work quoted by the reviewer to sustain him in his position, that "the States remain plenary sovereigns," notwithstanding their ratification of the Constitution, by which they delegated certain sovereign powers to the general head.

"The proposed Constitution," says the Federalist, "even when "tested by the rules laid down by its antagonists, is in strictness, "neither a national nor a federal Constitution, but a composition of "both. In its foundation, it is federal, not national; in the sour-"ces from which the ordinary powers of the government are "drawn, it is partly federal, and partly national; in the operation "of these powers, it is national, not federal; in the extent of "them again, it is federal, not national; and finally, in the autho-"ritative mode of introducing amendments, it is neither wholly "federal, nor wholly national."

This is the language of those statesmen who had the greatest agency in establishing the Constitution, and shows at least, in what light that instrument was regarded, by the men who framed it.

The doctrine of the reviewer, goes too far. It tends to make this government a mere league, offensive and defensive; a confederacy like that of the old Thirteen States, pregnant with a principle of weakness. But the federative principle, carried to the extent that it was under the old confederacy, was found to render the

government altogether weak and inefficient. Experience established this fact. That principle, therefore, in the formation of the present Constitution, was abandoned to a certain extent: it was only so far retained, as to protect the rights of the small States, without infringing upon those of the people of the large States: and to this end was the legislative department so constituted, that no law could be passed, or treaty made, without the concurrence of a majority of the people and the States. It is well known, that when the new Constitution was proposed, it was a question whether the Union should be formed upon the principle of a Union of co-equal societies, or upon the principle of population; in other words, whether the government should be wholly federal, or wholly national. The small States declared for the former principle, whilst the large States were in favor of the latter. If either one of these principles of Union, had been wholly adopted, it will be seen that either the rights of the small States, or those of the large ones, must have been sacrificed. Neither principle, therefore, was adopted altogether; but a compromise was resolved upon, by which both were brought into operation. The former was adopted in the organization of the Senate,—the latter, in that of the House of Representatives. Thus, this government does not look solely to the states, as the source of its powers, but to the States and the people, conjointly. In the operation too, of its powers, in the words of the Federalist, "it is national, not federal." It acts upon the people collectively, and not solely, as the reviewer would have us believe, individually. In all affairs of foreign regulation, and in all matters of internal regulation, that concern the whole, as the raising of taxes, &c. it operates upon the people as a body aggregate. And here, while upon this subject, we cannot refrain from quoting from Mr. Madison, a passage in every respect applicable to the question between us and the reviewer. "The idea "of a national government," says Mr. Madison, whose authority the reviewer, of all others, certainly cannot discredit, "involves "in it, not only an authority over the individual citizens, but an "indeffinite supremacy over all persons and things, so far as they "are objects of lawful government. Among a people consolida-"ted into one nation, this supremacy is completely vested in the "national legislature. Among communities united for particular "purposes, it is vested partly in the general, and partly in the mu-"nicipal legislatures; in the former case, all local authorities are

" subordinate to the supreme, and may be controlled, directed or " abolished by it, at pleasure. In the latter, the *local* or *muni-* " *cipal* authorities, form distinct and independent portions of the " supremacy, no more subject within their respective spheres, to " the general authority, than the general authority is subject to " them within its own sphere. In this relation, then, the proposed " government cannot be deemed a *national* one, since its jurisdic- " tion extends to certain enumerated objects only, and leaves to " the several States, a residuary and inviolable sovereignty over all " other objects. It is true, that in controversies relating to the " boundary between the two jurisdictions, the tribunal which is ul- " timately to decide, is to be established under the general govern- " ment. But this does not change the principle of the case. The " decision is to be impartially made, according to the rules of the " Constitution; and all the usual and most effectual precau- " tions are taken to secure this impartiality. Some such tribunal " is clearly essential to prevent an appeal to the sword, and a dis- " solution of the compact; and that it ought to be established un- " der the *general*, rather than under the *local* governments; or, to " speak more properly, that it could be safely established under " the first alone, is a position not likely to be combatted."

We have given this passage at length, because of its opposite- ness to the subject of this review, and because it is the exposition of the character of the Constitution, by Mr. Madison himself, who in the reviewer's estimation, is the great author and advocate of the doctrine we are combatting. Then it is Mr. Madison's opinion, that the States are mere *local or municipal* governments, and that all subjects of dispute between them and the general head, must be decided by a tribunal established under that general head. How does the reviewer reconcile this, with the assertion he makes, that " the States have not parted with a jot of their sovereignty." To sustain such a position, he must at all events discredit Mr. Madi- son. And if he does discredit Mr. Madison, in this instance, can he expect that we should yield to him full faith, when he speaks against us? Suppose that Mr. Madison has maintained the doc- trine here contended for by the reviewer, is not this one instance at least, in which he has denied it? And if he has opposed it, in one case, ought we to follow him, when he supports in another? The truth is, that Mr. Madison never did contend for this " plenary sovereignty," on the part of the States: it is alone the misconcep-

tion of the reviewer, that has given birth to this supposition. The cause of the reviewer is a desperate one, and in his extremity, he has been compelled to assert that which he is unable to prove, otherwise we cannot comprehend how it is, that Mr. Madison and Mr. Jefferson, and the Virginia resolutions, have been quoted upon all occasions, as both the "law and the prophets," upon which this doctrine hangs.

We have set forth the foregoing remarks, in order that we may not be understood as allowing the truth of the doctrine, that the Constitution must look to the States alone, and not to the people, for the origin of its powers; and, as our object in entering upon this review of the article before us, is to expose the absurdity of the proposition, that a State has a right to nullify a law of Congress, we will proceed no farther in the present inquiry as to the source of the powers of the government, but enter forthwith upon the examination of the reviewer's argument.

As the basis of this argument in support of the right of a State, to declare a law of Congress null and void within its limits, the reviewer lays down the doctrine, that the general government is the result of a compact, to which the States, as independent sovereignties, are parties. This he seems to think essential, if not to a clear understanding of the question, at least to the support of his argument; for he admits, that if the ground be established, that this is a government formed by the people in their aggregate capacity, in other words, is not a government formed by the States alone, and for their sole benefit, the argument against him is solid and unanswerable. But let us admit his grounds, and then see whether he establishes the doctrine he contends for. We will admit then, that the general government is the result of a compact, to which the States are parties, and upon this admission, so strenuously sought for by the reviewer, and regarded as so vital to the existence of his doctrine, we will shew beyond a doubt, that the right he contends for does not exist.

Before, however, we proceed to consider this argument, we think it but a measure of justice, to protest against the sheer declamation which has been poured forth, with no sparing hand against the Senate. The reviewer seems to entertain the opinion, that Mr. Hayne had brought upon himself mortification and defeat, in his support of this Carolina doctrine, in the Senate, while

Mr. Webster, his "skillful, acute and dextrous" opponent, had been left in complete possession of the field of debate; and, as an excuse for this defeat of the 'great champion of southern nullification,' he says, that "he (Mr. Hayne,) could hope for no indulgent hearing from the imperial Senate, bent on the oppression of distant provinces." Mr. Webster, on the other hand, he seems to think, triumphed in the debate, because, "he spoke to a majority in-"terested in the abuses to which the Union is made subservient, "which majority gave him a sustaining voice, willing ears, and cheer-"ing tongues." "National glory," he continues, "that delusion "which has betrayed so many nations to their ruin, combatted by "his side, and what is far less honorable to human nature, a base "avarice, perceived that his were doctrines to make colonies of "those States, whom it was profitable to plunder and oppress."— This is the language of the reviewer, in speaking of the Senate. But that it is the mere outcry of a junta, whose arguments and whose cause have been overthrown, no one who has not "part and lot" in this contention, will question. It is the voice of declamation, which is ever the resort of those who have failed in argument. The reviewer is, indeed, most feeling in his complaints.— He sheds tears at the depravity of the Senate of his country—tears that are only other evidences of the canker of the heart, of that gall and wormwood bitterness, that grows out of disappointment and mortification. This language is most eloquent—it is the language of passion, and therefore, not the language of "soberness and truth." The imperial Senate! The Senate of the United States imperial! If so, good sir, 'most right worthy and approved good master,' where, in what corner of the world, will you find a free, responsible legislative body? As well might the reviewer call that Senate imperial, which was an ornament and a grace to the old Roman republic, which all history holds up, as the most sage and patriotic body of all antiquity, as call the Senate of the United States imperial and depraved. We do not believe that there is a more enlightened or patriotic body in the world, than this Senate. It is composed of men, selected from the mass of the community, for their sense, intelligence and honour—of the leading men of this great republic—a republic that has given birth to statesmen, whose virtues and whose wisdom have received the approbation of the world. And yet, the reviewer with all the sagacity of the bull-dog, or of Justice Shallow, has discovered that this Se-

nate is imperial, and that its acts are characterized by oppression and avarace! If this is not the language of disappointment and idle invective, then never did baffled favourite rail at the master whose integrity he could not overcome,—then was Cataline an honourable man, and the Senate, the *patres conscripti*, who adjudged him a body, regardless of all sense of justice and mercy.

But let us proceed with the reviewer's argument. What is that argument? It is, that the States are independent sovereigns; that as independent sovereigns, they entered into an agreement, with the view of making themselves one nation, for certain purposes; that with this view, they created a general head, to whom certain powers were delegated; that this general head is to act alone under those powers, and that if it does in any wise violate them, any one State, who may think it proper, has a right to declare the act of the general head thus violating its powers, null and void within its limits; that this right is one that belongs to a State, as a *sovereign* party, to the compact or Constitution, and is therefore, a right not to be sought for in the terms of the compact, but is above it. This is the sum and substance of the argument set forth by the reviewer.

The whole of this argument, it will at once be perceived, resolves itself into the following proposition: have the States by this agreement or compact into which they have entered, parted with any of their sovereign rights; and if they have, to what extent have they done so? Have they, in other words, reserved this right of sovereignty, to make null and void within their own limits, those laws of the general government, they may deem unconstitutional? This is the proposition presented to us by the reviewer's argument; and by the solution of this, is the correctness of the doctrine in question to be decided. To this proposition then we reply, that the States have not individually the right to declare a law of the general government null and void; and this we contend for upon the ground, that this agreement or compact, to which the States have bound themselves, shews in a light not to be mistaken, that the right in question is not one of the *reserved rights*, but is delegated to a special tribunal.

Let us, therefore, as a question of first importance, proceed to the investigation, whether this right is reserved by these state sovereignties, or whether it has been parted with, or what has been done done with it.

It cannot be denied, that the States as sovereigns, in entering into this compact, had not a right to dispose of all their sovereignty, or as much of it, as they might have deemed proper. This being a right entirely within their control,—absolute in them, of course they must have had the corresponding right to dispose of it as they pleased. Upon this, the reviewer says, and justly too, that if the States have the right to judge of infractions, they have also the right to determine the means of redress; that this right, if they have it, is a *perfect right*, and therefore one that has the accompanying right of redress.

But we have now to shew, that the States have not this right to judge of infractions. That they have parted with this right, we contend is apparent from the Constitution itself—an instrument of agreement, according to the reviewer's own argument, to which the States as parties, are bound. The fifth article of the Constitution declares, that two-thirds, either of the members of both houses of Congress, or two-thirds of the States, shall call a convention to amend the Constitution, and that three-fourths of this convention shall have the power to *ratify* all amendments. Here then, is an article of this agreement, which points out the manner in which the States may prevent the general head from exbeeding its powers, and infringing upon their reserved rights. In the case of usurpation, here is a power which gives the right to redress, in the shape of an amendment to the Constitution. By this power, the States may so modify, alter or amend the Constitution, as to prevent the general head from exercising the disputed power.—They may expressly declare a disputed power not granted. Here then, is a means by which the States may obtain redress, and it is a means fixed upon by themselves, which clearly shews that it never was contemplated tha this power of nullfication, which in effect, would operate as an amendment to, or a decision upon the Constitution, should be exercised by one State alone; and, therefore, that no one State has a right to declare a law of Congress void within its limits, and thus in effect, of itself, say, what shall be a law to the general government, and what not.

The framers of the Constitution wisely foresaw, that the want of some tribunal to which the States might resort in case of disagreement, between the general government and a State, would be a source of endless embarrassment to the administration of the government; that it would lead to endless conflicting decisions on

the part of the several states—one state declaring a law constitutional, another declaring it unconstitutional; and that, therefore, it would be necessary to have some method provided, by which a decision upon the powers of the Constitution could be obtained, which would overcome all difficulties, reconcile all conflicting opinions, and render the union, harmonious in all its parts, solid and lasting. Here then, is a means, pointed out by the States themselves, by which all infractions of the Constitution shall be decided; and, as the reviewer says, as there is a responsibility upon all moral agents, to employ only those means which are requisite to the ends, and as this is a means sufficient to the end, and the best one the States have in their power, on this side of revolution, as we shall shew according to their own express agreement, it follows that none other can be resorted to.

It is true, that in the case of a tyrannic exercise of power on the part of the general government, a State, or any portion of the people of the nation, might resist, even unto civil war; but this would be the right of revolution, which no man denies. It would not be a right growing out of this compact of the States. Thus far then we have established the ground, that in all cases of the exercise of doubtful powers, we are to look to the Constitution, to see if it has pointed out a mode of redress; and that if it has done so, the States are bound, both as moral agents and parties to a compact, to follow that mode implicitly.

Here then, is the constitutional means, in the last resort, of preventing the exercise, on the part of the general government, of a power not granted. Therefore, it follows, that this being the means which the States themselves have pointed out, and this means being the alteration, modification or amendment of the Constitution by the States in convention, three-fourths of whom can establish any measure, that no one State has a right to judge of infractions. Not having the right then to judge, it has not the right to act for itself, and therefore has no right to declare a law of Congress null and void.

But the reviewer, with the rest of those who uphold this doctrine, contends that this method of deciding by a convention, although a means, is not the only means the States have in their power. He contends that this right of nullification, is a peaceful right, inherent in each State as a sovereign power, and this he can

tends for upon the grounds set forth in the Virginia and Kentucky resolutions of ninety-eight and ninety-nine. That these resolutions containany such doctrine, we utterly deny. It will be borne in mind, that we have already contended, and as we think, proved, that the States have parted with the right, singly to decide upon constitutional infractions. Let us now, therefore, proceed to consider, whether there is any thing in these resolutions, which disproves our argument, and shews that the States, each one for itself, have the right to decide in the last resort, upon the constitutionality of a law of Congress.

The chief of these resolutions, upon which this opinion of the reviewer is based, is the third, which is set forth in these words: "That this assembly doth explicitly and peremptorily declare, that "it views the powers of the general government, as resulting from "the compact, to which the States are parties, as limited by the "plain sense and intention of the instrument constituting that com- "pact, as no farther valid than they are authorized by the grants "enumerated in that compact, and that in case of a deliberate, "palpable, and dangerous exercise of other powers not granted by "the said compact, the States who are parties thereto, have the "right, and are in duty bound, to interpose for arresting the pro- "gress of the evil, and maintaining within their respective limits, "the authorities, rights and liberties appertaining to them."

If this resolution is supposed to assert the doctrine, that a State has a right singly to interpose against a law of Congress, by declaring it null and void within its limits, then we utterly deny that any such right is warranted by the Constitution, or can be shewn, from the nature or character of the government, to be a right inherent in the States, above the Constitution, as is contended. But if, on the other hand, it only means to assert the doctrine that, *the States*, not singly, but collectively, have the right to declare that the powers reserved by the compact to the States, have been violated, and thus to declare the act of the general government violating them, null and void; or, if it means, that three-fourths of the States, in convention assembled, as is the course pointed out by the Constitution, have the right to judge of infractions, then we will willingly grant its correctness. Then it contends for nothing more than we are all willing to admit, and affords no support, to the doctrine contended for, by the reviewer, that a state has of itself this right of nullification. But it is contended that this is

not the case. It is contended that the resolution means that a State has of itself the right; and this opinion is supported, says the reviewer, by Mr. Madison's exposition of the meaning and purport of this resolution, which is in the following words:—"It "appears to your committee, to be a plain principle, founded on "common sense, illustrated by common practice, and essential to "the nature of compacts, that where a resort can be had to no tri- "bunal superior to the authority of the parties, *the parties them- "selves must be the rightful judges*, in the last resort, whether the "bargain made has been perverted or violated. The Constitution of "the U. States was formed by the sanction of the *States, each in "its sovereign capacity.* It adds to the stability and dignity, as "well as to the authority of the Constitution, that it rests upon "this legitimate and solid foundation. The States then, being "the parties to the constitutional compact, and in their sovereign "capacity, it follows of necessity, that there can be no *tribunal "above their authority*, to decide in the last resort, whether the "compact made by them be violated, and consequently that as "parties to it, they must themselves decide, in the last resort, such "questions as may be of sufficient magnitude to require their in- "terposition."

"The resolution has guarded against misconstruction," continues Mr. Madison, "by expressly referring to cases of a 'delibe- "rate, palpable and dangerous nature.' It specifies the object of "the interposition, which it contemplates to be solely that of arrest- "ing the progress of the evil of usurpation, and of maintaining the "authorities, rights and liberties appertaining to the States, as par- "ties to the Constitution."

Then Mr. Madison's idea is, that in the case only of a *deliberate, palpable and dangerous exercise* of a power not granted, the State has this right to nullify. But if it is supposed that this exposition of Mr. Madison's, asserts the right on the part of a State singly, to declare a law of Congress null and void, then why, we inquire, go through the parade of making it a case of a 'palpable, danger- ous, and deliberate exercise of a power not granted.' The State that is to judge of this, is a party in the contention, and the party aggrieved; and therefore, whether the exercise of the power in question was dangerous or not, it would be pronounced to be so, by the State resisting it. A case even of the most undoubted con-

stitutionality, might, in the fury and surcharged zeal of the party resisting, be as easily believed a dangerous and deliberate exercise, of a power not granted, as a case that really was thus 'dangerous' &c. Here then is a difficulty in the threshold—a difficulty that is insuperable, if the interpretation be given to this exposition of Mr. Madison's, which the reviewer contends for.

"The States," says Mr. Madison, "being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority, to decide in the last resort, whether the compact made by them be violated; and consequently that as parties to it, they must themselves decide in the last resort." This argument, if it be intended to support the doctrine of South Carolina, it will be seen at once, is assuming the ground that the States have *retained* this sovereign right of judging for themselves of infractions of the Constitution. This is the ground of argument set forth by the reviewer, and is the proposition as we have contended, into which this whole discussion resolves itself. But we have already shewn, as far as the purposes of this argument require, that the States as parties to the constitutional agreement, have parted with this portion of their sovereignty---that they have placed it in the controul of three-fourths of the States in a convention. Is this denied? The reviewer admits it, for he says, in mentioning the various means of interposition a State has, that "she may assemble a convention to consider the validity of the disputed power." Where then does the reviewer get this power on the part of a State to assemble a convention? From the Constitution, is the reply. Then the Constitution has pointed out this as one of the means by which a State may interpose. Does it not, therefore follow, that the States have parted with this right which belonged to their sovereignty? If, then, they have lodged this right in a tribunal common to all, what right has a single State to claim it? It is a palpable absurdity to contend, that where several enter into an agreement, that a particular power shall be exercised by a particular person, that any one of the parties to this agreement, shall claim the right to exercise this power. A power once given under an agreement, cannot be revoked, but by all the parties to that agreement. Such is the case we are considering; and therefore, the States having lodged this power to interpose in a convention, it follows, that no one State can exercise it.

We are willing to admit, as the reviewer declares, that if this right

of interposition "is a cardinal principle of State sovereignty,"—that is, if the States still retain it respectively in their possession, "the conclusion is irresistible that a State has a right to nullify an unconstitutional law, within its own limits." But it has been seen that we deny this right. It has been seen that we attack the reviewer's argument at the threshold, and that we overthrow it, by proving that this right of interposition has been granted to a tribunal common to all. No matter, therefore, how perfect may be his reasoning, his argument still must fall, for he has based it upon sand. Like the image that Nebuchadnezzar saw in his dream, the foot of which was of clay, and the body of iron, the foundation upon which he rests it, is incapable of supporting it. There is no salvation for it. And here we might rest satisfied, with having destroyed that itself, upon which this Carolina doctrine rests, were it not that the subject is of so much importance, as to induce us to examine the arguments against us throughout. The fuller the exposition, the more certain the result.

This doctrine of nullification* is altogether a new doctrine; at least, if not of South Carolina origin, it has no support in the Virginia resolutions of '99. Perhaps, about the time of the birth of these resolutions, when party spirit ran high, some ultra States' Right's men; some too zealous advocates of the democratic party, may have advanced it, but it must have died away with the fire that gave it birth, for its ashes cannot even be raked up now, in the place where it is supposed to have once blazed. Virginia,—the State of Virginia, never contended for this power, and this we will shew from these resolutions, and the debates that were occasioned by them.

The Virginia resolutions, as good sense would interpret them, merely declare that in the case of a 'palpable, deliberate and dangerous' violation of the Constitution, a State has a right, not to *annul*, but to *interpose*. The doctrine these resolutions uphold is, that a State has a right to declare that it deems a law of Congress unconstitutional, and to appeal to the other States, to join with her in calling a convention to consider the validity of the disputed power. As a proof that such was the object of these resolutions, the last resolution concludes in these words:—"The General Assem-

* This word seems to have been adopted by general consent, to designate this Carolina doctrine.

" bly doth solemnly appeal to the like dispositions of the other " States, in confidence that they will confer with this Common- " wealth, in declaring, as it does hereby declare, that the acts afore- " said, are unconstitutional, and that the necessary and proper " measures, will be taken by each for co-operating with this State, " in maintaining unimpaired the authorities, rights, and liberties, " reserved to the States respectively, or to the people." This resolution plainly declares the nature of the doctrine upheld by the resolutions. It declares in language not to be mistaken, that the State of Virginia did not claim the right to declare an unconstitutional law null and void, within its limits. It invites the co-operation of the other States, thereby plainly looking to the means provided in the Constitution for deciding upon violations of the compact; and to this end were these resolutions transmitted to the other States.

This was the course too, pursued by Pennsylvania. She submitted the question raised by her, as to the constitutionality of a law of the general government, to the other States. These States refused to co-operate with her, Virginia among the rest, sending in an answer against the appeal. It was after this appeal to the States, and its failure, that Pennsylvania, forgetting for the moment her duty to herself and the Union, proceeded to force. With gallantry of the soldier, which urged her headlong into extremes, when once enlisted in this cause, she drew the sword. But no sooner was it drawn, than it was sheathed again. Her fury was too brief, not to give way to her patriotism and good sense.

That it was not the object of Virginia to assert the doctrine that a State has of itself a right to nullify an act of Congress, is further to be gathered from the debates that grew out of these resolutions of her legislature. We find that those very men who supported these resolutions, were particular in expressing disapprobation of any such doctrine as this of the reviewer. They expressed horror of any thing like force, and declared that these resolutions looked only to friendly exertions, such as an appeal to the members of the Union.

*General Lee, during the course of the debate upon these reso-

* The quotations that are here inserted from the debates of the Virginia Legislature, we have taken from a speech delivered by Governor Johnston, of Louisiana. We have quoted them upon the authority of this Senator, because we were unable to procure the debates themselves.

lutions, said—"He admitted the right of interposition, if the law "was unconstitutional; nay, it was their duty; every good citizen "was bound to uphold them in fair and *friendly exertions*, to cor- "rect an injury so serious and pernicious."

Mr. Mercer said, that "*force was not thought of by any one*"—that "nothing seemed more likely to produce a *repeal*, than a de- "claration made by a *majority of the States*, or by several of "them." "They (the States,) can readily communicate with each "other, and unite their common forces, for the protection of their "common liberty."

Mr. Barbour declared, that if he thought these resolutions invited the people to insurrection and arms, he would be the first to oppose them. That these resolutions did not look to insurrection, he said, "would appear, by reference to the leading feature in the "resolution, which was, their not being addressed to the people, "but to *the sister States*, praying in a pacific way, their co-opera- "tion in arresting the tendency and effect of unconstitutional "laws."

It was maintained by Mr. John Taylor, as we have already contended, that the fifth article of the Constitution had provided a means of prevention against the encroachments of the general government, upon the right of the States. "Two-thirds of "Congress," says Mr. Taylor, "may call upon the States for an "explanation of any such controversy as the present, by way of "amendment to the Constitution, and thus correct an erroneous "construction of its own acts, by a minority of the States, while "*two-thirds of the States*, are also allowed to compel Congress to "call a convention, in case so many should think an amendment "necessary for the purpose of checking the unconstitutional acts of "that body."

"The will of the people and the will of the States," continues Mr. Taylor, "were made the constitutional referee, in the case un- "der consideration. The State was pursuing the only possible "and ordinary mode of ascertaining the *opinion of two-thirds of* "*the States*, by declaring its own, and asking theirs. He hoped "these reprobated laws would be sacrificed to quiet the appre- "hensions even of a single State, without the necessity of a con- "vention or a mandate from three-fourths of the States." He "said further, "firmness and moderation could only produce a de-

" sirable coincidence between the States. Timidity would be as
" dishonorable as the violent measures which gentlemen on the
" other side recommended, in cases of constitutional infractions,
" would be immoral and unconstitutional.

Here then we have the resolutions, and the commentaries upon them. We contend that these resolutions do not assert the doctrine that the State of Virginia had a right to annul the act of the general government against which she complained. They merely assert the doctrine of *interposition*, as it is called by the reviewer, to be, that a State has a right so to interpose, in case of a violation of its reserved right by the general government, as to bring the question in the last resort, before a tribunal invested with authority for this purpose by the Constitution itself. That this is the true understanding, not only of these resolutions, but of the Constitution itself, in cases of the character of that under consideration, there cannot be a question. No man disinterested enough in this controversy to exercise his cool judgment, will question it.

The reviewer seems to admit that a State has no right so to resist the acts of the general government, as to throw itself in an attitude of open resistance---of war. Therefore, he contends that this right of nullification does not lead to such a result, but is a measure altogether *peaceful* in its character. And what is the argument with which he supports this extremely hazardous opinion?---an opinion, which we venture to predict no one will think upheld by the reasons he offers. Upon this question, we will let the reviewer speak for himself.

"As we have no where seen," says the reviewer, "so luminous an exposition of the character, and probable operation of a State veto, as is to be found in the report of the committee of the House of Representatives of the Legislature of the State of South Carolina, made in the session of 1828, we are tempted to lay it before our readers."
" If the committee do not greatly mistake, it never has in any coun-
" try, or under any institutions, been lodged, where it was less lia-
" ble to abuse. The great number by whom it must be exercised,
" a majority of the people of one of the States, the solemnity of
" the mode, the delay, the deliberation, are all calculated to allay
" excitement, and to impress on the people of the state, a deep and
" solemn tone, highly favorable to *calm investigation*. Under such
" circumstances, it would be impossible for a party to preserve a

" majority in the State, unless the violation of its rights be 'palpa-
" ble, deliberate and dangerous.' The attitude in which the State
" would be placed, in relation to a majority of the States, the force
" of public opinion which would be brought to bear on her; the
" deep reverence for the general government; the strong influence
" of that portion of her citizens who aspire to office or distinction
" in the Union; and above all, the local parties which must ever ex-
" ist in the States, and which, in this case, must ever throw the pow-
" erful influence of the minority in the State, on the side of the
" general government, and would stand ready to take advantage of
" an error on the side of the majority; so powerful are these causes,
" that nothing but the *truth*, and a *deep sense of oppression*, on the
" part of the people of a State, will ever authorize the exercise of
" the power; and, if it should be attempted under other circum-
" stances, those in power would be speedily replaced by others,
" who would make a merit of closing the controversy, by yielding
" the point in dispute. But, in order to understand more fully
" what its operation would be, we must take into the estimate, the
" effect which a recognition of the power would have on the ad-
" ministration, both of the general and state governments. On the
" former, it would necessarily produce in the exercise of a doubt-
" ful power, the most marked *moderation*. On the latter, a feeling
" of conscious security would effectually prevent jealousy, animos-
" ity and hatred, and thus give scope to the natural attachment to
" our institutions. But withhold this protective power from the
" States, and the reverse of all these happy consequences must fol-
" low, which, however, the committee will not undertake to de-
" scribe, as the living example of discord, hatred and jealousy,
" threatening anarchy and dissolution, must impress on every be-
" holder a more vivid picture than they could possibly draw. The
" continuance of this unhappy state, must end in the loss of all
" affection, leaving the government to be sustained by force, in-
" stead of patriotism. In fact, to him who will duly reflect, it must
" be apparent, that where there are important separate interests
" to preserve, there is no alternative but a veto or military force.—
" If these deductions be correct, as cannot be doubted, then, under
" that state of moderation and security, followed by mutual kind-
" ness, which must accompany the acknowledgment of the right,
" the necessity of exercising a veto would rarely exist; and the pos-

" sibility of abuse on the part of the State, would almost be wholly
" removed. Its acknowledged existence would thus supercede its
" exercise. But suppose in this the committee to be mistaken, still
" there exists a sufficient remedy for the disease. As high as is the
" power of the States in their individual sovereign capacity, it is not
" the highest power known to the system. There is still a higher pow-
" er placed above all, by the express consent of all, the creating and
" preserving power, deposited in the hands of three-fourths of the
" United States, which under the character of the amending power,
" can modify the whole system at pleasure, and to the final decision
" of which, it would be political heresy to object. Give then the
" veto to the States, and admit its liability to abuse by them, and
" what is the effect, but to create the presumption against the consti-
" tutionality of the disputed powers exercised by the general govern-
" ment; which, if the presumption be well founded, must compel
" them to abandon it; but if not, the general government may re-
" move it by invoking this high power to decide the question in the
" form of an amendment to the Constitution. If the decision be
" in favour of the general government, a disputed constructive pow-
" er, will be converted into an express grant; on the other hand, if
" it be adverse, the refusing to grant will be tantamount to inhibit-
" ing its exercise; and thus in either case, the controversy will be
" peaceably determined. Such is the sum of its effects. And
" ought not a sovereign State in protecting the minor and local in-
" terests of the country, to have a power to compel a decision?—
" Without it, can the system itself exist?"

Here then we have the argument of the reviewer in support of the proposition, that the right claimed is a peaceful one in its character. Quotation is heaped upon quotation, to support this proposition. Even Mr. Rowan, who took part in the debate upon this question in the Senate, is cited to give authority and weight to the doctrine. There is no dearth as to the quantity of argument. The reviewer has shut himself up in his castle of security, with all the means of defence he could gather together. With Mr. Rowan at one loop-hole, the reporting committee at another, and himself at a third, he seems confident in his strength. But with all his preparation, he cannot defend himself; his arguments are weak; they are easily overthrown. To this "luminous exposition," in the reviewer's estimation, establishing his proposition, we reply, that there ought

undoubtedly, to be a power to decide these questions of infraction. The Constitution, without it, would be the sport of every momentary distemparature; of every caprice or unreasonable jealousy of the several parties, to it:—It would be pregnant with the seeds of dissolution. To this report of the committee, we reply that there is a power to decide these questions, and that power is the creation of the sovereign parties to the compact. It is the Supreme Court, in the first place, and in the event of the sanction which it is supposed this Court *might* give to usurpation, a convention of the States in the last resort. These are the only legitimate means of attaining the end, and none other can be resorted to, as peaceful in its character. All others lead to bloodshed—to a fraternal war, which is ever, if the experience of the past is the test, the most bloody and horrible of all wars.

But the reviewer has asserted, that this right claimed, will not lead to force; and as his opponent in this field of discussion, we are bound to inquire into his arguments. What are his reasons? The "large number," he says, "by whom it is to be exercised, a majority of the States, the solemnity of the mode, the deliberation, &c. are things calculated to allay excitement, and produce *calm investigation.*" Then *calm investigation* is to be expected from a party to the contest, and the resisting party too—the party whose most vaunted rights are supposed to be infringed. But is it not more probable, that high excitement, that over-violent discussion, that ever phrenzied declamation, would prevail in such a state of things, than this *calm investigation?* Is it not more probable that all patriotism would be smothered in such a state of things, by cries of oppression, from the public places, of trampled rights, and bold resistance, from the demagogue's desk? Is it not more probable that the drawn sword itself would be held up, than that calm investigation would prevail, "within and around and over all," under such circumstances. And what after all, is this great check to revolution? the majority of a State—the majority of one State against the minority of that State, and twenty-three other States besides. Is this so large a body, the half of one State out of twenty-four; 500,000 people out of 13,000,000, that it cannot be roused into a ferment, by violent popular harangues, or still more violent publications? The probability we think is rather on the other side; that the numbers embarked in this work of nullification, would be

of but little avail against acts of rashness and folly. One would rather suppose, and that too, even against the high authority of this confident reporting committee, that in such cases, the bounds within which judgment and reason are operative, would be left at an almost immeasurable distance in the back ground. We trust, therefore, that these are not the only checks to such a result, as internal war. No, there is another, say this reporting committee, Mr. Rowan and the reviewer. There is the moderation that will be exercised by the general government. And is it, we inquire, upon such a staff as this they lean? Is this their safe-guard from the horrors of Revolution or Rebellion? Not even we believe, all Mr. Hammilton's fervent patriotism, or General Hayne's zealous efforts in behalf of the preservation of the Union, would save us from the evils of dissolution, if this be the check relied upon, against such a consummation! In the name of the good sense and patriotism of the South, is this the only preservative against bloodshed? How is it possible for the general government to display this moderation? Can it refrain from enforcing its own acts? The general government is not its own absolute master. It is the trustee of certain delegated powers of a sovereign character. It cannot say I "go where I list," or that I come at my pleasure. It has prescribed duties to perform,—duties prescribed by the people and the States, who conjointly constitute the source of its powers. And what are those duties? One is, "to lay and collect duties," and to see that they are *uniform* throughout the nation. Here then is an act passed, laying a duty. Twenty three States assent to it, but one State refuses; one State nullifies the act. What is to be done? Is the general government to withdraw the act, and say, that it cannot enforce it? Is it to destroy a measure, which twenty-three States deem salutary to the nation, because one State chooses to entertain a contrary opinion? If so, would not this be an evidence that it had no powers at all; would it not prove that the general arm was entirely inefficient, even greatly more so than the old confederacy, for the purpose of governing the nation? It is required of Congress to lay duties, and of the Executive to enforce the payment of them in a case of resistance. The President has power to call out the militia, and "shall take care," says the Constitution, "that the laws be faithfully executed." Mr. Madison has said, in a case of this nature; in the case of Pennsylvania in 1809, that the Executive is bound to

carry into effect all laws sanctioned by the Supreme Court. The truth is, that the government has no discretion in this case. It must enforce the execution of all laws until repealed. But to set this question in a still stronger light, we will instance the case of a duty imposed for the sake of revenue. The power of the government to impose duties for the sake of revenue, is beyond all question. "Congress shall have power," says the Constitution, "to lay and collect taxes, duties, &c. to pay the debts, and provide for the common defence and general welfare of the United States." Here then, is a clear, indisputable power, to impose duties, for the sake of revenue—to defray the expenses of the government. The reviewer cannot deny this, although he may deny the right of the government to lay duties as a protective policy. How then is the government to raise this revenue, if the acts of Congress imposing these duties can be resisted at the pleasure of a State. Congress is not only required to impose duties, but further, to see that they are *uniform* throughout the States. Then, can these duties be made uniform, if a State nullifies the act imposing them; that is, declares it null and void within its limits? In such a case as this, there is not even the possibility of a doubt, but that the general government is bound to enforce the law, until it is repealed by the proper tribunal, to wit: the Supreme Court, or the States in convention, even if to do so, she has to call upon the executives of the several States for the militia of the country; and to this end, has the power been given to the President, to call forth the militia to enforce the laws of Congress.

If, therefore, a State nullifies an act of Congress, it compels the general government to resort either to force, which makes this right contended for, the right of revolution, or else to resort to its power under the Constitution, of calling a convention. But the calling of this convention to settle the question, can only be done by two-thirds of Congress. To shew, therefore, that it would be folly to suppose that the general government, should not proceed to enforce its laws, even by arms, if requisite, we will suppose the case that two-thirds of Congress shall refuse to call this convention to amend the Constitution. It is a case that may happen, nay more, in nine cases out of ten would happen; for it is but seldom, if ever, that a law of any importance passes through Congress, by so large a majority as two-thirds. What is to be done in such a case as this? The executive is bound to enforce all laws, until repealed by a competent tribunal, which we have already shewn is, in the last resort, a

convention of the States. Congress refuses to call this convention. What can the President do under the Constitution and his office, in such a case, but take those measures which will force the execution of the law, and thus make duties, as is required, uniform. He has no alternative. He must call forth the militia; and thus will this doctrine contended for produce revolution, or rather rebellion, as the case would be,—thus is it nothing more than as has been proclaimed, by some of the over-heated friends of State rights, "the right to fight."

And could it be expected that the strong party, the general government, who from the very fact of a majority of the members of Congress, being requisite to pass this law, is supposed to have a majority of the people, and the States in its favour, will suffer a minority; a minority of one out of twenty-four, to exercise such a control over her, as to compel her to call a convention to decide whether she has a power, which she confidently believes she has; whoever contended for the doctrine before, that the general government believing itself to have the right to pass a law, and under that conviction passing it, is bound to call a convention to satisfy the resisting parties' opinion. Under what master did the reviewer learn his logic? Is he a disciple of Zeno, or, rather is he not a disciple of *Apollonius, that he advances so preposterous, so truly ridiculous a proposition? This may be the logic of South Carolina, Doctor Slop, the cunning Armenian, or the society of the learned Doctors, of whom the French satyrist speaks in such lavish terms of ridicule; but out of South Carolina, there is no one who will be found rash enough to advance it. Whose rights, we inquire, are supposed to be violated? The State's Rights. Who then is interested in upholding those rights? The State. What are the means she shall make use of? To lay the question before the Supreme Court, and in case the decision of the Supreme Court is against her, to invite the co-operation of the other States, to aid her in calling a convention, as the last peaceable resort. All other means lead to war, and to fraternal war, the most horrible of all wars.

The foregoing argument has been held with the view of heswing, that the States as *parties to a compact*, have parted with this right of judging of infractions of the Constitution, and therefore, have no longer any control over it. Our object now is, to shew

*A celebrated Magician.

that the Supreme Court is the tribunal, in whose hands this power is also lodged. That this Court was intended to be the usual and ordinary referee of all cases arising under the Constitution; and that the right, on the part of the States, to call a convention, was only intended as a mode of deciding in the last resort, as a means of avoiding that very evil, which would flow as we have shewn from the exercise of this power by a single State, we think we can shew to a demonstration.

We lay it down as a fundamental doctrine that in all cases of confederacy or union of separate sovereignties, where special powers are delegated to a general head, there must be some common arbiter appointed to decide, when those powers have been violated. We lay down this as a binding rule in all cases of confederacy of this character, because it must strike the good sense, nay, even the common sense of all, that where there is no common arbiter, but the power of judging upon questions that concern the whole, is retained by each member of the confederacy, there would be endless conflicting decisions, which would destroy the harmony of the Union, and eventually its existence. In the language of Mr. Webster, "in Carolina the tariff would be a palpable, deliberate usurpation. In Pennsylvania, it would be clearly constitutional, and highly expedient." Therefore, is it necessary that there should be a common and ordinary referee, by whose solemn judgments these different conflicting opinions would be reconciled, and harmony made to pervade the whole. The framers of the Constitution must necessarily have looked to such a case as this, and they must have provided for it. On the one side, it is contended that they have provided for it, by giving the Supreme Court judgment over it. On the other side, it is denied that the Supreme Court has this power. Let us examine then into the arguments that advance this latter position, and see, whether they derive any support from the letter of the Constitution, or the nature of compacts.

The reviewer says, that "in looking into the Constitution, he does not find it laid down, that the Supreme Court has the power to decide in a controversy between the *government of the United States and a State*, on any question growing out of its reserved rights." And he goes on to shew, by an extremely forced and laboured argument, that because the Constitution does not in so many words, give the power, it does not exist. But we will inquire of the re-

viewer, whether it is not very bad logic to conclude that because the power is not given in these words, it may not be given in other words. Here again the reviewer's logic is at fault. We ask the reviewer whether such a system of reasoning would not be as wild as some of Godwin's or Mr. Locke's speculations, as fanciful and laughable as are those, with which that weariless theorist Mr. Shandy, used to annoy the good though rather obtuse "Uncle Toby."—*It is not written in so many words in the Constitution, that the Supreme Court shall have power to decide in a controversy to which the government of the United States and a State are parties; therefore, the Supreme Court has not the power!* This is truly a most admirable conclusion, and certainly entitles the reviewer to the high dignity of being called the "very syllogism of this undertaking" of South Carolina! We commend him to the reasoning of Master Slender, who could not bear the smell of *roast meat*, because he had bruised his shin, in playing at sword and dagger, for a dish of *stewed prunes!* But in the English language, the reviewer will find there is no scarcity of words to convey our ideas, and that though a power may not be contained in a certain set of words, yet it may be in another. Let us see, therefore, what this instrument of the united wisdom of the age does say upon the powers of the Supreme Court. What it does *not* say, we will leave to the sage reflection of our opponents in this controversy. The Constitution provides, that "the judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects."

It is true then, from this enumeration of the powers of the Supreme Court, that we do not find it laid down in so many words, that the Supreme Court shall decide all cases of controversy, between the *government of the United States and a State.* But we find power granted to this department, *over all cases in law and*

equity under the Constitution, and over all controversies to which the *United States are a party*. Now, if these clauses are not sufficient to give the Supreme Court the power to decide upon all cases, between the government of the United States and a State, then there is no such thing as certainty in language; then we need never expect to assert that two and two make four, without having it proved to our astonished senses, that they make five; or any other like impossibility, as that Hotspur had plucked "honour from the pale-faced moon." This is the age of wonders,* and therefore, perhaps, we should be implicit of belief in all things, no matter how monstrous they may appear to our reason. The reviewer undoubtedly seems to have caught up the spirit of the times, and we dare say that by this time, his credulity has induced him to believe *inter alia*, in the old story of the Astronomer, who drew the moon so near him, that the bunch of thorns in it pricked his eyes. But belief in these, as in this argument of the reviewer, we leave to the credulous.—*Credat Judæus Apella, non ego.*

General Hamilton in his writings on the Constitution, in taking a view of the judicial department, in relation to the extent of its powers, puts forth the following passage, which bears directly upon the question before us. "Controversies," he observes, "between "the nation and its members, or citizens, can only be properly re- "ferred to the national tribunal. Any other plan would be contra- "ry to reason, to precedent, and decorum."

From this passage then, and indeed from all that this writer has put forth upon this question, we are left in no doubt that the Supreme Court is the ordinary referee of all cases between the general government and a State.

In order to shew that the Supreme Court must necessarily decide upon questions of state sovereignty, we will suppose the case of a controversy to which the *United States are a party*. Such a case is within the expressly delegated powers of the Supreme

**Miracles*, even have been performed in this 19th century, to the no little astonishment of the holy ministers of our religion, who have declared that, the state of the world is such, that miracles are no longer necessary.—Prince Hohenloe, has travelled from east to west, curing as he journeyed, the lame, the halt and the blind; and we doubt not that, by this time, he or some other princely imposter, fool, idiot or madman, has discovered the celebrated Elixir, purchased by St. Leon in his wanderings, which has the power of prolonging life and multiplying gold.

Court—and such a case is this of the tariff in South Carolina, which has given rise to this doctrine of the reviewer. We will then take this tariff case. Is not the State concerned in this case? Does not a decision upon it, bring in question its sovereign rights? In deciding this question of the tariff to which the United States are a party, the Supreme Court must look to the Constitution, to see whether the right to impose a tariff exists. It does exist in the opinion of the Supreme Court, and this Court accordingly decides against the State. Does not this decision involve the question, whether the State's sovereignty is encroached upon? Who will doubt it? The Supreme Court decides under the Constitution;—the Constitution is a paramount law to it. In that Constitution it is laid down that "the powers not granted are reserved to the States or the people. When a question arises, therefore, which brings into question this Constitution or fundamental law, the Court must see whether by deciding in favour of the general government, upon a case to which the *general government is a party*, it does not infringe upon the *reserved rights* of the States. How else is it to decide under the Constitution? How else is it to make the Constitution a paramount law? It is true that a bare question of constitutionality between the general government and a State, is not likely to be brought, and perhaps cannot be brought, according to the forms of the Constitution, before the Supreme Court. But this we do not contend for. "Cases in general," says Governor Johnston, "must operate upon individuals and corporations, not upon sovereign States. Thus for example under the tariff, if the goods are introduced and not entered, they will be seized under the revenue laws—then it is a question in law arising under the laws of the United States; if they resist the seizure, it is opposition to the laws; the Courts will proceed to judgment, and the President is authorized to call on the Executives of the States, for the militia to execute the laws." "If they enter the goods, and suit is instituted on the bond, the Court must decide although the Constitution, the power of the United States, or the *sovereign power of a State* may be incidentally brought in." And again the same Senator observes: "All controversies, in which the United States are a party, gives jurisdiction of all cases, where her *sovereign power* is called in question; and all questions of *inhibited powers* arise directly under the Constitution." Indeed from all that we have seen upon

this question, we are left in no doubt as to the character of the objections urged by the reviewer against the power of the Supreme Court, to decide upon questions involving the *reserved rights* of the States. They are utterly groundless: and though urged in all the solemn pompousness of studied language, they will fail to convert any to the "Catholic belief" (as it has been termed) of South Carolina, unless indeed it be some like that class of philosophers, who enter into long arguments to prove that the "lip is parcel of the mouth."

The reviewer in the further support of his assertion, that the Supreme Court has not the power of deciding upon controversies to which the *United States' government and a State* are parties, quotes a passage from Mr. Madison's report on the Virginia resolutions, which in answer to the argument, which it seems had been urged, "*that the Supreme Court was the sole expositor of the Constitution*," goes on to say, that there are cases of usurpation, which the forms of the Constitution would never draw within the control of the judicial department, and that it was to such a case these resolutions looked. "The proper answer to the objection is," continues Mr. Madison, "that the resolution of the General As-"sembly relates to those great and extraordinary cases, in which all "the forms of the Constitution, may prove ineffectual against the "infractions dangerous to the essential rights of the parties to it. "The resolution supposes, that dangerous powers not granted, may "be sanctioned by the Supreme Court, and consequently that the "ultimate right of the *parties to the Constitution*, to judge whe-"ther the compact has been dangerously violated, must extend to "violations by the judiciary."

This is an argument, which Mr. Madison urged against the doctrine that the Supreme Court was the *sole* expositor of the Constitution. The reviewer however makes use of it, as an argument, to shew that the Supreme Court was *in no instance*, to be the expositor of the Constitution. But does this argument support the reviewer at all in his assertion? We do not contend that there is no tribunal, in the last resort, beyond the Supreme Court to decide a question of constitutional infraction. On the contrary it is that, which we have contended for throughout. We have ourselves all along contended, as Mr. Madison here contends, that the *parties to the compact*—that is: the States in Convention, are a tribunal in the last resort, created by the Constitution to judge of infractions.

This argument then of Mr. Madison's, which the reviewer quotes, from its "extreme appositeness" to his case, is in fact the very argument that we make use of to support our own. We thank the reviewer for thus administering to our case, although we know he has done so, from no love he bears towards us. Let us see how this argument looks upon paper, when sifted to the bottom, and divested of all outward circumstance, of good diction and well turned periods. The Supreme Court, he says, has no power to judge of questions of constitutional right, affecting a State, *in any case.*

Why? Because Mr. Madison says that "the Supreme Court is not the *sole* expositor of the Constitution." And therefore Mr. Madison, proving, that it is not the *sole* expositor, &c. it follows that it is not *in any case*, the expositor of the Constitution, upon a question to which the State is a party. Surely, this is no argument against the doctrine that the Supreme Court is the *ordinary referee*, of all cases, arising under the Constitution. *Bonus Homerus dormitat:*—the reviewer, as Tristram Shandy says of *my Uncle Toby*, "fell asleep at this precise point."

From all that has been thus far urged by the reviewer, we can find no support for this Carolina doctrine. It must at all events, be manifest even to one of no extraordinary powers of discernment, that the arguments which we have just examined into, are of too frail a texture to withstand the ordeal of investigation. Like Fallstaff's valour, they vaunt of much, but when put to the test, are nothing. Full of expedients, surmises, false instances, fears, misgivings, and such like, they might serve to grace a village politician's harrangues, on an election day, but are certainly out of place when set forth in the dignified pages of a review. And now we turn from these arguments, with no small degree of wonder, at the singular fatuity that characterizes them, to see whether this doctrine derives any support, from the consideration which the reviewer has told us, it will be remembered, is of importance to his argument: that the *general government is the result of a compact to which the States as sovereigns are parties.* How then does this affect the argument here against the powers we claim for the Supreme Court? The States as sovereign parties to this compact have reserved rights, says the reviewer, and consequently have each a sole control over those reserved rights, for the reason, that this control is a special incident to sovereignty;—therefore a State has

a right to judge for itself of infractions of the compact; and consequently the power is not in the Supreme Court. But it will be remembered that we have shewn that a State can part with its sovereign attributes, and that in entering into this confederacy, it did part with its sovereign right to judge for itself of infractions, by lodging it in a convention of all the States, in the last resort.

How then does the argument against the powers of the Supreme Court, now stand? A State as a member of this confederacy, has delegated this right of judging of infractions in one case, to a convention of the States:—It therefore follows that, having given it, in one case, to a tribunal, as the common arbiter, in the last resort, of all such disputes, she has of herself, nothing to do with it. Then this argument of the reviewer, that the power is not given to the Supreme Court, because the State has retained its sovereign attribute, to wit: the right to decide upon its reserved rights, must fall, because, we have shewn that the State has parted with this attribute of sovereignty by giving it in the last resort to a common arbiter, to wit: the States in convention. Having once parted with it, under an agreement, it would be contrary to all received opinions, as to the nature of *compacts*, or agreements, that she could have any controul over it. A power once given under an agreement, cannot be withdrawn unless by the consent of all the parties to that agreement:—it must remain in the trustee's possession, as long as the agreement itself exists.

Is this then the only remaining consideration urged by the reviewer, why the Supreme Court has not the power, under the Constitution, to judge of infractions? No—he has given us the "why and the wherefore," in all plenty. The unwearied zeal with which he supports his cause, has raised up for him arguments of all shapes and colours, but the right ones. There is another reason, which is, that if this power is lodged in the Supreme Court, there will be no check upon the encroachments of the general government.—The Supreme Court, he informs us, though a very good check upon the encroachments of the States, is yet no check upon the encroachments of the United States. We will not pretend to deny, that our government is a system of checks and balances. On the contrary, it must be manifest to all, that it is this fact which our arguments tend indirectly to establish. That there are powerful checks against the encroachment of the general government, the

reviewer himself, we think, will be disposed to admit, when the film has in some measure been removed from his eyes. The knowledge that such things are, does not lie at the bottom of so deep a well, that some, at least, have not yet dived deep enough for it. Does the reviewer see no check against usurpation in the peculiar construction of the judiciary department, in its entire independence of the other branches of the government? The judiciary is so constituted as to hold out no temptations to corruption. It has neither control over the sword nor the purse of the nation—neither *force* nor *will*, as has been said of it, but *judgment* alone. "The judges," says the Constitution, "shall hold their offices during good behaviour," and shall "receive for their services, a compensation which shall not be diminished during their continuance in office." Do these provisions favour the pretension, that under the doctrine we uphold, there is no check upon encroachments upon the States? And besides these, does the right of the States to appeal to a tribunal above the Supreme Court, furnish no check against encroachments? We would suppose, that these things served to shew the admirable system of checks and balances, of which the government is made up. These are as strong as could be—as strong as need be. Here are checks and balances in all plenty to preserve the constitution. There could be none more effective under any confederacy or form of government in the world. But on the other hand, in case the power claimed by South Carolina exists, we inquire what checks there would be against the encroachments of the States upon the general government? The reviewer has expected this objection, and said in answer to it, that the *patriotism** of the people of a State is a security against such encroachments. But in the language of Mr. Clay, "is not the *patriotism* of all the States as great a safeguard against the assumption of powers not conferred upon the general government, as the patriotism of one State is against the denial of powers which are clearly granted!" This argument ap-

*Can the reviewer suppose for a moment, that we would be guilty of such a piece of *superstition*, as to believe in the efficacy of this *State patriotism* under such circumstances. Sir Jonah Barrington himself, could yield no faith here! Perhaps, the reviewer in urging this argument, had it in contemplation to play the part of *Peter in the tale of the Tub*, with us. If so, he has reckoned without his host. We can yet distinguish, and we are thankful to those who begot us even for so small a matter, between *stale crusts of bread* and *good mutton!*

plies with ten-fold force against the reviewer. It is all in all for us, and nothing against us. Such an argument as this, is wholly impotent. It is the last desperate effort of a sinking faction, and the voice, the patriotic voice of South Carolina, will be heard, saying, put not your trust in such doctrines, or in such men, "for in them there is no salvation."

As to the objection which has been urged by the reviewer, that if this power is lodged in the Supreme Court, "the government of the United States, or a party in the administration of its constituted authorities, could always appoint precisely such judges as would do the business of the national majority most effectually," we have but little to say. After the foregoing arguments, it is scarcely necessary to touch upon this objection. We presume that there can be found but few, who can bring themselves to such a stretch of belief, as to credit an assertion which declares the judges of the Supreme Court, to be the *mere creatures* of the general government. If there is any tribunal in the world, which from the character of its construction, can be said to be free from all improper bias, we should suppose it would be this Supreme Court. It is as we have already shewn, so constituted as to be independent of all control, and we think that it would certainly be stretching a point, to suppose that those who have no reason to be under the influence of another, should willingly place themselves under that influence. If the judges of this Court, who are independent in office, whose compensation for services is fixed and cannot be diminished whilst they are in office, can be said to be under any temptations to bias in favor of the general government, we may as well throw up at once all idea of ever seeing a tribunal which is not subject to improper controul. We cannot credit the idea, that there is actually so much depravity in the heart of man, as that he should willingly and unnecessarily sacrifice his honour and independence; and the assertion that the judges of the Supreme Court, constituted as they are, would be liable to the control of a party in the administration of of the government, pre-supposes this depravity. And further, to suppose the case of a party in the administration of the government, who would go to such lengths as to enact laws which grind one portion of the nation to dust, in order to feed the greedy appetite of another, and not only to enact such laws, but also, to tamper with the sacred character of this tribunal, which has ever been regarded as one of the safeguards of our liberties, so

as to remove honorable and just men from it, and put in their place dishonest and corrupt men, is to suppose a state of national depravity, which we are confident does not exist at this day, and which, when it does exist, will insure the speedy termination, at least, of our republican government.* But the reviewer certainly will not be so rash as to assert the existence of this national depravity at present. In order to suppose such a state of things, it certainly would be but fair and proper in the reviewer, to shew the existence of some law, of this vicious character. This must first be established to support this supposition; and until this is established, all suppositions of the character of that under consideration, must be regarded by all sane men as but the chimeras of a distorted brain.—This objection is as idle and wild, as are the fancies of a madman. But throw out of the question all considerations that might be urged, growing out of the character and construction of the government,—admit that "practically in nine cases out of ten, the Supreme Court would be the instrument of the usurpations of the general government," and what follows? Has not the State another remedy—another constitutional remedy? Is there no *balm in Gilead* for such a disease? Is the Supreme Court the only resource, as has been feelingly complained, in the power of the States, on this side of revolution? We trust, it is not the only resource. Let the States, we say, have all the preventatives they can have, without weakening too much the arm of the national government, without rendering it absolutely nerveless. There is another resource, and one adequate for all legitimate purposes of prevention. That resource is as we have already shewn, a convention of the States, or the people. Then, in the contingency of a case happening, which shall require the exercise of such a right as the *right to fight*, a contingency that we trust never will happen, each State, or any portion of the people of the Union, has the right to take up arms. This is the last resort of all quarrels between a government and its subjects; and is one of those unalienable rights of mankind about which there is no dispute in this country."

No matter in what particular we examine into this doctrine,

* If such things are, or can be, it must be admitted that all the provisions of the Constitution to secure an honest and intelligent representation in Congress are of no avail; and we must henceforth look upon the natural depravity of our race, as being so great as to render all efforts at self-government utterly idle.

we find it on all sides alike weak and indefensible. Examine it as we may, it in no instance looks to the durability of the Union; and though held up by its authors and advocates as the doctrine of light that is to penetrate the veil of darkness that encompasses the land, we are confident in the assertion that scarcely a man of sense or intelligence can be found who will not look upon it as absurd in the extreme. It requires nothing but a direct mind to penetrate through the tinsel garb with which it is clothed, and see into its inward deformity. Like the apples that grew on the banks of the Red Sea, it is "dust and ashes" at the core. Not all the apparent devotional feeling, with all the figures, tropes, metaphors, and such like graces of language, which those who advocate it, have put under requisition in its behalf, can delude the nation into its support. Neither Mr. Hamilton's inconsiderate zeal, which has no thoughts or fears for the morrow. Mr. McDuffie's less violent though more steady support, nor General Hayne's high confidence, which at times hurries him out beyond his depth, will prove of any avail. Not even the patriot zeal of *Brutus himself, can save it from the doom that awaits it. It soon will be said of it, *it was and it is not.*

We are induced to believe that this doctrine of South Carolina has arisen from a mistaken idea as to the powers of a party to a compact. It proceeds as we conceive in a great measure from the idea, that a State as a member of this confederacy, has a peaceful right—a constitutional right to secede from it at pleasure.†

That a State has not a right to secede from the Union at plea-

* Mr. Turnbull, not long a citizen of this country, and known in South Carolina as the author of some letters of a political character signed *Brutus* made a speech at the "nullification dinner," held in Charleston the 1st of July last, from the perusal of which one would suppose that the orator had dealt as much with the wine bottle on that occasion, as he had with his subject. Indeed, from the complexion of this speech, we should not be at all surprised at hearing that when the "feast was done," some friendly *Cassius*, in the glow of the moment had picked the pocket of this devoted Brutus of all that the acursed tariff had left in it.

†The reader will remember that we have shewn in another part of this review, that the nullification of a law of Congress by a State, places that State virtually without the pale of the Union. It cannot be said to be a member of the Union, at the same time that it refuses to obey the laws. Under such circumstances, a State has to all intents and purposes, seceded from the Union.

sure is a proposition to us incontrovertible. Such a right can neither be derived from the express terms, nor from the nature or character of the confederacy. Has the doctrine ever been received that a party to a compact has a right to revoke that compact? This right to secede necessarily involves this doctrine, for the secession of one party from this confederacy, is to all intents and purposes a revocation by that party of the powers granted by the compact. Not all the subtlety of the antient sophists, not Mr. Hayne himself, "pregnant with mysteries of metaphysics," can throw over this subject an impenetrable veil. Its natural deformity will still shew itself, no matter by what arts you attempt to disguise it. A party to a compact has no right to revoke that compact. The old confederacy, says the Federalist, "resting on no better "foundation than the consent of the several legislatures, has been "exposed to frequent and intricate questions concerning the valid- "ity of its powers; and has, in some instances, given birth to the "enormous doctrine of a right of legislative repeal. Owing its rati- "fication to a law of the State, it has been contended that the same "authority might repeal the law by which it was ratified. However "gross a heresy it may be to maintain, that a *party* to a *compact* "has a right to revoke that *compact*, the doctrine itself has had "respectable advocates.

"The possibility of a question of this nature, proves the necessity "of laying the foundations of our national government deeper "than in the mere sanction of delegated authority. The fabric of "American empire ought to rest on the solid basis of *the consent* "*of the people*. The streams of national power ought to flow im- "mediately from that pure original fountain of all legitimate autho- "rity."

This doctrine of revocation, is as much a political heresy, as it is a heresy in the Church of England to discredit the creed of St. Athanasius.

Is not such a doctrine as this revolting to all our ideas of the nature of compacts? If six men enter into an agreement to do a particular thing, has one out of those six, a right to revoke it? On the contrary does it not require the whole six, to cancel that agreement? This is a fundamental regulation, the good sense, undeniable law, of all contracts. We have just supposed the case of individuals. Does it alter the case in the least, that the parties to

this agreement, are sovereign States? Not the least. The same principle pervades all cases of agreement, whether the parties to those agreements be two or a hundred, individuals or sovereign States. Then according to this principle, where several States unite together and create a common head to whom is entrusted the exercise of particular powers, which powers are made the subject of the articles of Union, it follows that no *one* of these States can decide upon this subject of the agreement,—can say to this common head, this power you shall exercise, and this you shall not. The whole of the parties alone can do this. Those that bind may break their own bands; or as is the present case, they may provide in their agreement or constitution, in order to avoid the evils of revocation, that is, of dissolution, that a particular tribunal shall exercise the power of deciding, when the powers granted to this common head, or those retained by the parties to the compact, have been in the one case, exceeded, and in the other, violated.

To suppose that one State has the right to declare the compact violated, would be to suppose the confederacy a mere league, offensive and defensive, from which any one of the States might secede at pleasure. But it will be recollected, that this was the very case, under the old confederation, that the present Union was intended to guard against. This was the chief cause itself, of the instability of the Grecian confederacies, which were broken, as often as the uncontroled will, the caprice, or the ambition of a State induced it to do so. To avoid this defect, and to make the government more binding and lasting in its character, it has been rendered out of the power of a State to secede from this Union, unless by the consent of the other States. A State under our confederacy, has no right to secede for any cause whatever, short of a case justifying revolution. In a case justifying revolution, as has been observed before, her right to resist is above the Constitution; it is the right of nature, that all men have the right to resist tyranny, and it was this right our revolution of '76 asserted. A State, therefore, has not a *constitutional* right to withdraw from this confederacy. Having once joined it, she is bound to it as long as it exists. She has entered into an agreement by which she has delegated certain powers, to a general head, and provided the means of preventing usurpations by that general head. Does not then this very provision against usurpation, shew that usurpations were contemplated, and the case provided for.—

Then if the case has been provided for, the right to secede for such a case, is not a constitutional right---it leads to revolution.

The whole of this argument in favor of this Carolina doctrine takes the broad ground, a false and destructive one in its tendency, that the States are sovereign, notwithstanding their delegation of certain sovereign powersto the general head. It will be seen at once, that if a State possesses this right, it has a complete control over those rights which it has delegated to the general government. If it has this right, has it not undoubtedly the power, to put a stop to every measure undertaken for the general welfare, even granting that there is no question about the constitutionality of those measures? Its merest caprice then is a law to the Constitution itself. In this case the Constitution would be but the being of a day. It could not live under twenty-four different masters, each of them sovereign, and therefore generally capricious and selfish. Let it be remembered, that these States comprise a vast extent of territory, and that therefore there must exist various local prejudices, all of a conflicting character. Habits, parties, friendships, interests, all tending to a diversity of opinion, must exist in a country embracing such a large extent of territory as ours. Must there not then be unavoidable diversity of opinion among the various States? And what would become of the Constitution, if it had these various interpreters of these various prejudices, tastes and opinions? Could it exist under such a state of things? Under such circumstances, nothing could save it from destruction, unless indeed, that Being "who tempers the wind to the shorn lamb," should shield it with his Almighty arm. All human aid would be utterly of no avail. This Government under the operation of this State veto, would be like a discordant family, its various members pulling this way or that, as their separate interests or caprices would lead them, and the head of it, too powerless, to exercise that salutary control, which reconciles these different interests, and makes it harmonious, powerful and respectable. Such are the evils that flow from this doctrine.

And further, the reader will perceive, that while this doctrine gives to the States all the most important attributes of sovereignty, it makes the general government a mere creature of the States. But against such a doctrine as this, we are unquallifying in our protest. The general government is as much a sovereign, as far as its powers exist, as the States. If the States have sovereign rights, the general government also has sovereign rights. It mat-

ters not, for all the purposes of this argument, whether these sovereign rights are derived solely from the people, or the States. There they are delegated to the general government, for a particular purpose, to wit: the control of all national affairs, and to this end, it is sovereign until its powers are revoked. The general government has sovereign control over all affairs that concern the people or the States collectively; that is, over all foreign, and all internal national concerns. No man of sense in the Union who is at all acquainted with the character of the Constitution, will doubt that the general government was intended to have a *general discretionary superintendance*; for if this be denied, the government is no longer a confederate government, but is, as has been observed by the writers on the Constitution, a mere simple alliance offensive and defensive. But this doctrine of South Carolina in effect denies this *general discretionary superintendance* on the part of the general government: for it must be apparent to every one that this right of nullification is nothing more than the right of one member to resist the discretion of the general government. It is, as the reviewer has observed, a "State Veto." In objection to this then we say that no such power on the part of a State was contemplated. If the writings of Hamilton and Madison are to be taken as authority, it will be seen that this was one of the chief evils to be guarded against by the present Constitution. The prevailing disposition in all governments of a confederate character to anarchy among the members, rather than to tyranny, or consolidation of all power in the head, is a proposition that until this time has been looked upon as having received demonstration. The Federalist is filled with arguments to this end, all of them proving the necessity of a closer union than existed under the old confederacy. The evils of this State Veto, are set forth by Alexander Hamilton, with all that sound sense and grasp of comprehension which characterizes even more than the most of his cotemporaries his views of the Constitution. His arguments upon this question have borne down all opposition; and we venture to say that scarcely a man out of South Carolina can be found, who after an examination of them will not be entirely convinced of the folly of this doctrine. If this State Veto exists, in the language of this Statesman, "we cannot fail to verify the gloomy doctrines which predict the impracticability of a national system pervading the entire limits of the present confederacy."

If it then be the character of the government, that the General Head has this discretionary superintending power, it must be conceded that this State Veto as contended for, does not exist. And here we are met by the remark, that unless a State has this Veto, the government is to all intents and purposes a consolidated government, in other words, is national, and will swallow up all the powers reserved to the States. The intelligent reader will at once perceive that this is nothing more than a repetition of the same objection which was urged against the adoption of the present Constitution, and which is most ably answered in the 17th number of the Federalist. "Allowing the utmost latitude," says that work, "to the love of power, which any reasonable man can require, I "confess I am at a loss to discover what temptations, the persons "entrusted with the administration of the general government, could "ever feel to divest the States of the authorities of that description. "The regulation of the mere domestic police of a State appears to "me to hold out slender allurements to ambition. Commerce, finance, "negotiation and war, seem to comprehend all the objects which "have charms for minds governed by that passion; and all the pow- "ers necessary to those objects ought, in the first instance, to be "lodged in the national depository. The administration of private "justice between the citizens of the same State; the supervision "of agriculture, and of other concerns of a similar nature; all "those things, in short, which are proper to be provided for by local "legislation, can never be desirable cases of a general jurisdiction. "It is therefore improbable that there should exist a disposition in "the federal councils, to usurp the powers with which they are "connected; because the attempt to exercise them would be as trou- "blesome as it would be nugatory; and the possession of them, for "that reason, would contribute nothing to the dignity, to the impor- "tance, or to the splendour of the national government, &c."

As this argument is necessarily too long for insertion in the pages of a review of this character, we shall refer those of our readers who wish to examine it more at large to the work itself from whence it is taken. From the examination which we have given to it, we are left in no doubt as to the character of this objection. This *consolidation*† to all appearances so much dreaded, is nothing more than

†Indeed the very mension of this *national control*, seems to strike terror in-

a "snare to the unwary:" men of sense as they have hitherto done, will set their faces against it; and though thrown out by so responsible a person as Mr. Hayne, it will soon sleep in that bed of oblivion, which is alike the resting place of folly and crime. Urge what objections you may: turn and twist the Constitution as you can, still this government is a national government in many aspects in which you may view it. "In the operation of its powers it is national," and "in the sources from whence its powers are drawn it is partly national," as we have quoted before. Its confederate character consists in its being a union of States, who have each a reserved right, to regulate, in the language of Mr. Madison, "all local and municipal matters." In all other respects the States constitute a union *national* in its character. Would it not be absurd then under such a confederacy to contend that a State has a right, a right as a party to a compact, to decide upon what are the constitutional subjects of this national control; for this would be the effect of a decision upon a question involving her reserved rights. Such a right on the part of a State would destroy all energy in the government; it would entirely paralize its arm. The undoubted doctrine is that the States are sovereign only so far as they exercise a legislation over their own *local* concerns; and that they cannot oppose themselves separately to any measure undertaken by the General Head for the general welfare. This is the plain, evident, undeniable interpretation of this much laboured point, which reconciles all difficulties, and renders the constitution a wise production, sent into the world to lighten the burdens of mankind: any other interpretation, involves the grossest absurdities and makes that instrument the merest abortion of the age; worse even than a "sounding brass or a tinkling cymbal."

Instead of the doctrine we are contending for being "full of hu-

to the breast of Mr. Hayne. He hates it, he knows not why, he cares not wherefore:—It is enough he hates it.

'Non amo te Sabidi, nec possum dicere, quare:
Hoc tantum possum dicere, non amo te,' &c.

This is the character of his objection to the national features of the government. He is averse to all national control. Approach me in any form but this, is the complexion of his language.

—"As the rugged Russian Bear,
"The armed Rhinoceros, or the Hyrcan' tiger,
"Take any shape but that."

miliation," as the reviewer has said of it, we are willing to leave it to the candid consideration of the community, whether it is not the only one that will give permanency to our institutions. Unless the general arm is so strengthened as to be free from this State controul, we shall soon be brought to that situation in whic we can neither go to the right, nor to the left, without disgrace. Instead of a nation fertile in its resources, and advancing with a gigantic stride, to the highest point of power and greatness—with an industrious, thriving and happy population; in the striking language of inspiration "strong in its own strength," we would soon be reduced to the situation of twenty-four miserable dependencies, continually engaged in a petty border warfare, without scarcely any of the means of existence; our fields untilled, our workshops in ruins, and our vessels no longer able to hold together in our harbours, whilst at the same time, some ambitious and powerful neighbour, under the plausible pretext of an equivalent for protection, would deprive us of any remaining enjoyment that our follies had left in our possession.—We have the warning voice of those who have gone before us, to avoid these evils. Once part the States, and misfortunes gather upon us. The fate of the ancient republics, and those of modern times, should teach us to beware of anarchy. The horrible scenes that were acted in England under Cromwell, and the still more horrible ones that were acted in Paris, when France, under the lavish liberality of Robbespiere, emphatically *got drunk with blood*, should impress upon our minds, the necessity of making the most effectual precautions against the evils of popular fury. By the folly and infatuation of mankind, misery, wretchedness, squalid poverty, nay, more, even the most abject slavery itself, has been visited upon the fairest portions of the earth. And such things may even be felt here—as ruined refugees, we may yet be doomed to wander throughout the world, like the outcast descendants of Israel. strangers to the country of our birth-right, unless that high moral courage, of which the reviewer speaks, "of being prepared to defend our freedom, even unto death," directed by sound sense, should continue to preserve the general government in all its strength.—Strength in the general arm, arms us against the greatest danger we have to fear from the construction of the government. With this we may even hope that time in whose footsteps desolation usually follows will pass smoothly over us. Without this nothing can save

us from untimely ruin; not even that *rational attachment*, so confidently relied upon by the reviewer.

And here we would take leave of this subject, were it not that Mr. Hayne has been pushed forward as the great apostle of light, who is to banish the "Egyptian darkness," that encompasses the nation, whilst Mr. Webster, his opponent in debate, has been attacked with no little severity, and his very able arguments endeavoured to be detracted from. That Mr. Hayne is this apostle of light, or that he has succeeded in any measure to establish this Carolina doctrine, we think is no longer a question. Men of sense will look upon his attempts as a complete failure, and the impartial decision of the country, will proclaim to this gentleman, one day or other, the bliting truth. The days of his political importance are numbered. Indeed, our chiefest wonder is, that such a man as Mr. Hayne should have staked his reputation upon the success of so Quixotic a doctrine. He must have counted largely indeed, upon the ignorance of the nation, for he certainly is not so bereft of all intellect himself, that he cannot comprehend the difficulties his arguments cannot surmount. The truth is that Mr. Hayne has adopted this child of State's Rights, and like most parents, is blind to its deformities. His affection for it is the affection of a father for his "first born." He idolizes it; and such even is the depth of his feeling towards it that he would call its destruction, like the murder of Duncan, *a deep damnation!* With such feelings he is at all times loud in its praises. He suffers no opportunity to pass by; but upon all occasions of festivity, when cheered with wine, and strengthened with meat, gives birth to discourses in its behalf, which might do honor to the scholist, but certainly cannot add one particle to the measure of a Statesman's fame. Nothing we believe can save his political reputation, but a retraction of all that he has urged upon this question,—a retraction as decided, as his support of it has been decided. If he cannot be great, at all events, let him be magnanimous.

Such is the situation in which Mr. Hayne's support of this doctrine has placed him. But how different is that of Mr. Webster! With characteristic good sense, he fearlessly opposes error. Conscious of his strength he marches boldly to the question; and under his severe investigation, his keen sarcasm and his close reasoning. Mr. Hayne's doctrine like the Prophet's gourd, is suddenly withered

up. Mr. Webster too, it is even admitted by the reviewer, has "sustaining voices and cheering tongues." The sense of the Senate is with him, as is the sense of the nation. He triumphs on all hands. In such circumstances, the reviewer's efforts at detraction are as vain and useless, as utterly feeble as are the helpless lamentations of our friends. Mr. Webster's security against such attempts rests upon a foundation too broad and solid to be at all impaired. In the language of a celebrated writer, "the favour of his country constitutes the shield which defends him against a thousand daggers." And here we will take leave of this subject, in the earnest hope, that this ferment of South Carolina, will prove nothing more than one of those partial political distemperatures, which must take place, in all governments, and in all time; and which pass away almost as suddenly as they spring up, having at least the one good effect, of making us more watchful in the preservation of our liberties.

LUCIUS FALKLAND.

Baltimore, October 16th, 1830.